

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HARVARD REAL ESTATE-ALLSTON, INC.

Plaintiff,

v.

KMART CORPORATION,

Defendant.

Civil Action No. 04-12249-DPW

STATEMENT PURSUANT TO LR D.MASS. 16.1(D)(3)

Defendant Kmart Corporation ("Kmart") submits the following Statement pursuant to LR D. Mass 16.1(D)(3):

Kmart and its counsel certifies that they have conferred (a) with a view to establishing a budget for the costs of conducting the full course - and various alternative courses - of the litigation, and (b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in LR D. Mass 16.4.

Dated: January 10, 2005

Counsel for KMART CORPORATION,

KMART CORPORATION

By its Authorized Representative

/s/William R. Moorman, Jr.

/s/ Amy Bateson

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